IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1021 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORPORATION - Petitioner(s)

Versus

HARISH RUNAJILAL SHARMA - Respondent(s)

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Appearance :

MR RM CHHAYA for Petitioner(s) : 1,
MR TR MISHRA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/09/2005

ORAL JUDGMENT

In the present petition, the petitioner, Ahmedabad Municipal Corporation has challenged the legality of the award dated 19.8.2000 passed by the Labour Court, Ahmedabad.

2. The respondent who was engaged as Junior Clerk in the pathology laboratory run by the petitioner-Corporation was alleged to have committed misconduct on 9.8.90. It was alleged that a receipt was prepared by the respondent for Rs.55/- original of which was given to the patient whereas in the carbon copy to be retained on the record of the petitioner, he had indicated that a sum of Rs.5/- is received. In that manner by fabricating the documents, he misappropriated Rs.50/-. Upon conclusion of the departmental inquiry, the petitioner imposed a punishment of dismissing the respondent from service. His departmental appeal was also rejected. The respondent, therefore, approached the Labour Court by raising a dispute. Before the Labour Court, he admitted the legality of the departmental inquiry conducted. The Labour Court also did not find any illegality in the conclusions arrived at by the employer in the inquiry. The Labour Court, however, adopting a reformatory attitude, set aside the order of dismissal and instead punishment of withholding of five increments with permanent effect was imposed on the respondent.

3. In the facts of the case, the award of the Labour

Court cannot be sustained. When the respondent was proved to have committed the misconduct of misappropriation of public money by fabricating false receipts, there was no question of showing leniency. The punishment imposed by the petitioner could not have been characterized as one which was so disproportionate to the proved misconduct that would shock the conscience of the Court. The Labour Court could not have, therefore, interfered with the order of punishment. The award is therefore required to be set aside.

4. In the result, the petition is allowed. The impugned award is set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)